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THOMAS D. AMRINE

November 23, 1998

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

Re: Opposition to BellSouth's Petition for Reconsideration and Clarification, CC Docket No. 98-121

Dear Ms. Salas:

Enclosed for filing in the above-referenced docket, please find an original and eleven copies of MCI WorldCom's Opposition to BellSouth's Petition for Reconsideration and Clarification. Also enclosed is an extra copy to be file-stamped and returned.

Please call me if you have any questions. Thank you.

Very truly yours,

Thomas D. Amrine

Thomas D. Amrine

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Application of BellSouth Corporation,	)	CC Docket No. 98-121
BellSouth Telecommunications, Inc.	)	
and BellSouth Long Distance, Inc.	)	
for Provision of In-Region, InterLATA	)	
Services in Louisiana	)	

MCI WORLDCOM'S OPPOSITION TO BELLSOUTH'S PETITION FOR RECONSIDERATION AND CLARIFICATION

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November 23, 1998

EXECUTIVE SUMMARY

Far from identifying any errors that require reconsideration or ambiguities that demand clarification, BellSouth's petition primarily rehashes arguments that the Commission already considered and properly rejected. In the few instances where BellSouth does not simply repeat its prior arguments, it mischaracterizes the Commission's Order or attempts, improperly, to introduce new, though unavailing, facts. None of BellSouth's arguments for reconsideration has any merit.

PCS and Track A. The Commission was correct to discount BellSouth's flawed studies purporting to demonstrate that PCS is an actual commercial alternative to wireline service in Louisiana. At most, BellSouth's evidence showed that fewer than a dozen Louisiana consumers have substituted PCS for wireline service. The Commission's determination that this showing was inadequate under Track A did not create a "geographic scope" requirement or a "metric" test. Without requiring that any particular number, or percentage, of consumers substitute PCS for wireline service, the Commission can -- and, indeed, must -- conclude that substitution by a mere handful of consumers is insufficient to show that PCS is an actual commercial alternative to BellSouth's local service. The Commission also correctly found that BellSouth's evidence did not sufficiently distinguish substitution of PCS for wireline from supplementation of wireline with PCS and that AT&T's wireless advertisements did not prove PCS to be an actual commercial alternative to wireline.

OSS. BellSouth offers no new support for its continued insistence that average installation intervals should not be used as a measure of OSS performance. BellSouth cannot deny that OSS readiness is the primary determinant of those intervals, and the Commission has been correct to emphasize the importance of average installation intervals as a measure of parity.

In addition, the Commission properly found that BellSouth should include in its calculation of flow-through those types of complex orders that it claims to have automated, and there was no error in the Commission's conclusion that the TAFI interface provides superior integration capabilities to BellSouth's retail operations than it does to CLECs.

Unbundled Network Elements. Contrary to BellSouth's argument, the record shows that BellSouth offers no method of accessing and combining network elements other than collocation. BellSouth fails to note in its Petition that it has already rejected all alternatives that have been presented to it by CLECs. The Commission correctly concluded that collocation is the only method provided by BellSouth, and that BellSouth has not shown it provides collocation on reasonable and nondiscriminatory terms.

Unbundled Switching. BellSouth's renewed insistence that it is not required to provide CLECs with vertical features that are loaded, but not activated, in its switches adds nothing to the arguments that the Commission has already properly rejected. Similarly, BellSouth offers no reason for the Commission to alter its conclusion that BellSouth's offsetting payment scheme does not satisfy BellSouth's obligation to provide usage data relating to reciprocal compensation.

Branding of Operator Services and Directory Assistance. The Commission correctly held that BellSouth had not proven it provides branding of operator services and directory assistance calls on a reasonable and nondiscriminatory basis. BellSouth now argues for the first time that its dedicated trunking requirement is nondiscriminatory because it uses dedicated trunks itself. However, even if that factual allegation could be considered at this stage, it does not prove nondiscrimination. At best it shows that an arrangement that is efficient only for an incumbent with massive traffic volumes is hugely inefficient for -- and therefore discriminates against -- emerging CLECs whose traffic volumes do not approach the incumbent's.

Section 272. Notwithstanding BellSouth's argument for reconsideration, the Commission did not impose a requirement that a section 271 applicant be in compliance with section 272 before gaining long distance entry. When the Commission found that BellSouth did not meet section 272, it did so because BellSouth failed to demonstrate that it will comply with section 272 in the future. In addition, the Commission did not require any new or inconsistent types of reporting, but rather simply fleshed out the requirements it had stated before.

Pricing of Interim Local Number Portability. The Act expressly grants the Commission pricing authority over interim local number portability, as the Eighth Circuit recognized. The Commission therefore did not err by stating that it may set prices for interim local number portability.

Public Interest. BellSouth's argument that the public interest test is nullified by the competitive checklist is as devoid of merit as it was in BellSouth's last two applications. The public interest test is indisputably an independent requirement of section 271 entry, and mechanisms to ensure that applicants will continue to comply with the Act after entry are undoubtedly essential to the public interest. Only performance standards and enforcement mechanisms can ensure that a local market, once opened to competition, will remain so after section 271 entry.

BellSouth presents no basis for reconsideration or clarification of the Commission's Order, and its motion should be denied in its entirety.

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MCI WORLDCOM'S OPPOSITION TO BELLSOUTH'S PETITION FOR RECONSIDERATION AND CLARIFICATION

MCI WorldCom, Inc.[1/] respectfully opposes BellSouth's Petition for Reconsideration and Clarification of the Commission's order rejecting BellSouth's application to provide in-region interLATA service in Louisiana. BellSouth's Petition consists primarily of a near-verbatim repetition of its earlier arguments, without even an attempt to explain why reconsideration is warranted. In the few instances in which BellSouth adds anything to its prior arguments, it mischaracterizes the Commission's decision or submits "evidence" that is both untimely and unavailing.

I. BELLSOUTH FAILED TO SHOW THAT PCS SERVICE IS AN ACTUAL COMMERCIAL ALTERNATIVE TO TRADITIONAL WIRELINE SERVICE IN LOUISIANA

The Commission examined BellSouth's evidence and properly concluded that BellSouth failed to show that PCS service is an actual commercial alternative to traditional wireline service

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1/ WorldCom, Inc. and MCI Telecommunications Corp. previously filed separate briefs in this proceeding. On September 14, 1998, WorldCom, Inc. merged with MCI Communications Corporation to form a new company, MCI WorldCom, Inc.

for Louisiana consumers today.[2/] Contrary to BellSouth's argument, the Commission did not "refuse[] to credit" persuasive evidence that PCS competes with wireline service. BellSouth Pet. at 2. The Commission found -- for good reason -- that BellSouth's evidence was not persuasive because it was rife with methodological flaws. Order ¶¶ 35-42. As the Commission emphasized, "the persuasive value of any study will depend in large part on the quality of the survey and statistical methodologies that are used." Id. ¶ 32. Because BellSouth's M/A/R/C study was "fundamentally flawed," id. ¶ 35, and because BellSouth's NERA study was "based on [a] faulty assumption," id. ¶ 42, the Commission was correct to reject that evidence.

The Commission's refusal to rely on studies that are methodologically unsound in no way imports improper "geographic scope" or "metric" tests into the Track A inquiry. The Commission criticized the M/A/R/C study's non-random selection process because it prevented any reliable extrapolation from the small number of survey respondents to any broader group of Louisiana customers. Id. ¶ 37. The point of that criticism was that the M/A/R/C study, at best, can support conclusions only about the 202 respondents themselves; it cannot even support conclusions about consumers in the New Orleans metropolitan area, from which those 202 respondents were drawn. Id. The Commission's unwillingness to accept an extrapolation from a non-random sample has nothing at all to do with any "geographic scope" requirement.

Nor has the Commission created a "metric" test by declining to conclude that a "significant" amount of substitution of PCS for wireline service has occurred in Louisiana. Id.

2/ Mem. Opinion and Order, Application of BellSouth Corp., BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Louisiana, ¶ 25, CC Docket No. 98-121, FCC 98-271 (rel. Oct. 13, 1998) ("Order").

¶ 40. Although a "competing provider" for purposes of Track A need not serve any specific market share,[3/] it must offer consumers an "actual commercial alternative" to the BOC. Mich. Order ¶ 75. Contrary to BellSouth's suggestion that any degree of substitution of PCS for wireline qualifies a PCS carrier as a "competing provider," the Commission has correctly held that an insignificant amount of competition is not enough to make such a carrier an "actual commercial alternative." Id. ¶ 77. According to BellSouth's logic, if only one or two consumers in an entire state chose to use PCS service in lieu of wireline, PCS would qualify as an "actual commercial alternative" to wireline service. See BellSouth Pet. at 4 ("A BOC relying on PCS substitution to comply with Track A need only demonstrate that substitution is taking place, not that a particular number of consumers has substituted (or would be expected to substitute) the two services"). Requiring a significant enough amount of substitution to demonstrate that PCS is a true commercial alternative to wireline service -- i.e., that there is "tangible affirmation that the local exchange is indeed open to competition"[4/] -- is not a "metric" test. Without requiring that any particular number, or percentage, of consumers substitute PCS for wireline service, the Commission can -- and, indeed, must -- conclude that substitution by a mere handful of consumers is insufficient to show that PCS is an actual commercial alternative to BellSouth's local service.

The Commission was also correct that the M/A/R/C study did not sufficiently distinguish between substitution of PCS for wireless service and supplementation of wireless service with

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3/ Application of Ameritech Michigan to Provide In-Region, InterLATA Services in Michigan, CC Docket No. 97-137, ¶ 77 (rel. Aug. 19, 1997) ("Mich. Order").

4/ H.R. Rep. No. 104-204, at 76-77 (quoted in Application by SBC to Provide In-Region, InterLATA Services in Oklahoma, CC Docket No. 97-121, ¶ 42 (rel. June 26, 1997) ("Okla. Order")).

PCS. Order ¶ 39. Only the survey respondents who stated that they replaced their existing wireline service with PCS could unequivocally be said to have substituted PCS for wireline service. That category included only 10 consumers (5% of 202). See M/A/R/C Louisiana PCS Study at 7. Other categories that BellSouth argues exhibit substitution behavior -- respondents who purchased PCS instead of an additional wireline and respondents who purchased PCS instead of wireline when getting phone service for the first time at a new residence -- may well exhibit only supplementation of wireline with PCS. As the Commission properly noted, BellSouth did not show that respondents who purchased PCS as their initial phone service never purchased wireline service as well. Order ¶ 39.

Finally, the Commission properly declined to conclude on the basis of advertisements for AT&T Digital One Rate that PCS is presently a commercial alternative to wireline service in Louisiana. Those advertisements did not constitute "representations" by AT&T "that the Digital One Rate Plan is a viable substitute for wireline service," BellSouth Pet. at 5, and in any event, the Commission correctly determined that such "representations" would not constitute sufficient evidence that consumers are actually substituting PCS for wireline service. Order ¶ 43.[5/] The bottom line is that if PCS were an effective substitute for wireline service, both on technical and economic grounds, consumers would be using PCS service as a substitute for wireline in droves. It is no wonder that BellSouth can point to only ten consumers in the entire State who have made that choice.

5/ The new factual information offered by BellSouth at footnote 6 of its petition is, of course, not relevant to this proceeding -- even if it supported BellSouth's claim, which it does not.

II. BELLSOUTH'S CHALLENGES TO THE COMMISSION'S OSS FINDINGS ARE WITHOUT MERIT

The Commission has not "inappropriately" extended OSS obligations, nor has it "misunderstood the workings of BellSouth's OSS," as BellSouth contends. BellSouth Pet. at 6. BellSouth is simply attempting, once again, to escape from clear obligations of the Act.

A. Average Installation Intervals.

BellSouth rehashes its earlier arguments that the use of average installation intervals should not be a measure of OSS performance. BellSouth does not deny that average installation intervals are far greater for CLECs than for BellSouth retail customers; yet it somehow attempts to suggest that this says nothing about the readiness of BellSouth's OSS. That is simply wrong. The Commission has repeatedly emphasized the importance of average installation intervals as a measure of parity. Mich. Order ¶¶ 164-71; Application of BellSouth Corp. Pursuant to Section 271 of the Communications Act of 1934 to Provide In-Region, InterLATA Services in South Carolina, CC Docket No. 97-208, ¶ 132-40 (rel. Dec. 24, 1997) ("SC Order"); Application by BellSouth Corp. Pursuant to Section 271 of the Communications Act of 1934, as amended, to Provide In-Region, InterLATA Services in Louisiana, CC Docket No. 97-231, ¶¶ 41-46 (rel. Feb. 4, 1998) ("La. I Order"). Similarly, the Louisiana PSC has required BellSouth to report the same measure.[6/] Both commissions were correct to do so. Although BellSouth repeats its contention that average installation intervals are affected by factors other than OSS,[7/] BellSouth does not and

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6/ See General Order, Docket No. U-22252 (Subdocket-C), In re: BellSouth Telecommunications, Inc. Service Quality Performance Measurements (Aug. 19, 1998 Open Session), at p. 9 (ex. A hereto).

7/ BellSouth raised the identical argument in its South Carolina application and first Louisiana application. BellSouth Louisiana I Application at 35 n.31 (filed Nov. 6, 1997);

cannot deny that the readiness of OSS, including the interface, back-end systems, and personnel, Mich. Order ¶¶ 134-35, is the primary determinant of these intervals. Moreover, even if a particular disparity in average installation intervals, such as for resale or for loops, could be attributed to deficiencies in BellSouth's performance other than BellSouth's support systems, this would still show that BellSouth had failed to meet the requirements of the checklist -- the failure would simply be for the checklist items regarding resale and loops. BellSouth's semantic game, therefore, is irrelevant, in addition to being wrong.

BellSouth also repeats it oft-rejected argument that installation intervals are irrelevant because some factors beyond its control, such as whether an end-user declines the first available installation date, may contribute to the existence of unequal average installation intervals. But the Commission has long recognized this possibility and has allowed ILECs to demonstrate that any disparity in average installation intervals is the result of such factors. Mich. Order ¶ 170; SC Order ¶ 138. BellSouth made no such showing.

B. Complex Orders

BellSouth states that it properly excluded complex orders from its calculation of flow-through, BellSouth Pet. at 7, asserting that complex orders are placed manually in BellSouth's retail operations as well as by CLECs. However, BellSouth not only excludes from its flow-through calculations complex orders that CLECs must place manually, it also excludes the four types of "complex" orders that BellSouth allows CLECs to place via EDI. While MCI WorldCom believes that BellSouth should automate a much greater number of complex orders, for the purposes of this petition all that is necessary for this Commission to reiterate is that those

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BellSouth South Carolina Application at 32 (filed Sep. 30, 1997).

complex orders that BellSouth claims to have automated must be included in calculating flow-through. After all, these ostensibly "complex" orders are actually quite basic orders -- multiline hunt groups, basic rate ISDN, PBX trunks, and SynchroNet services. See Stacy OSS Aff. ¶ 136. BellSouth does not state that these four types of orders are ones it places manually in its retail operations, and it is entirely implausible that all of these orders, including hunting, for example, must be placed manually.

C. Trouble Analysis Facilitation Interface ("TAFI")

BellSouth asserts that this Commission should "correct" its "error" in concluding that TAFI provides superior integration capabilities for BellSouth's retail operations than it provides for CLECs. However, in its initial filing, BellSouth properly acknowledged that TAFI is a human-to-machine interface when used by CLECs. Stacy OSS Aff. ¶ 161. As a result, CLECs, unlike BellSouth retail representatives, must take trouble tickets from their own systems and manually retype them into TAFI; conversely, CLECs must take information obtained from TAFI and manually retype it into their own systems. This is certainly inferior integration to that which BellSouth provides to itself.

In addition, BellSouth does not and cannot deny that TAFI fails to provide any maintenance and repair functionality for unbundled elements that do not have telephone numbers assigned to them -- including loops, ports, switching, transport, and dark fiber. Order ¶ 150. Certainly, BellSouth uses TAFI to process maintenance and repair requests for loops and ports of its own customers. Thus, TAFI provides a far smaller scope of coverage for CLECs than it does for BellSouth's retail customers. As for BellSouth's ECTA interface, this interface is superior to TAFI for CLEC use because it is a machine-to-machine interface based on industry standards.

Nonetheless, the Commission was correct to conclude that ECTA does not contain all of the functionality available to BellSouth's retail operation through TAFI. CLECs are certainly entitled to have access to this additional, desirable functionality, as this Commission properly explained.

III. THE COMMISSION CORRECTLY DETERMINED THAT COLLOCATION IS THE ONLY MEANS OF COMBINING NETWORK ELEMENTS THAT IS OFFERED BY BELLSOUTH

BellSouth contends that the Commission was "incorrect" when it concluded that BellSouth offers collocation as the only means of gaining access to and combining network elements. BellSouth Pet. at 9. However, BellSouth points to nothing in the record that contradicts the Commission's conclusion. The portion of the Varner affidavit cited by BellSouth merely describes the bona fide request ("BFR") process generally, without mentioning methods of combining network elements at all. Varner Aff. ¶¶ 18-22.[8/] The Varner reply affidavit (as opposed to the evidence submitted with BellSouth's application) claims that "BellSouth will evaluate any future proposals" concerning methods of combining elements, but then admits that its position is that "to date, each of the alternatives presented to BellSouth have either been technically infeasible or would involve an unwarranted and unlawful intrusion into BellSouth's network." Varner Reply Aff. ¶ 12. BellSouth's categorical rejection of two options proposed by AT&T ("recent change" and "direct access"), see Varner Aff. ¶¶ 76-79; Milner Aff. ¶¶ 40-44, demonstrates that BellSouth will not seriously consider alternatives to collocation. The

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8/ Moreover, that general discussion notes that the first step in the BFR process is a determination by BellSouth of whether it will voluntarily provide the requested element or service if, in BellSouth's judgment, it is not required to do so by the Act. Varner Aff. ¶ 21. Given BellSouth's continued insistence that collocation is "the only method of access contemplated by the Act," BellSouth Pet. at 9, the availability of the BFR process is far from a commitment on BellSouth's part to provide methods of access other than collocation.

Commission therefore correctly concluded from the Varner affidavits and the remainder of the record that BellSouth offered no method other than collocation for gaining access to and combining network elements. Notably, even in its petition, BellSouth does not identify any other method of access to which it would agree.

The Commission was also correct in finding that BellSouth failed to demonstrate that it provides collocation within time intervals that are reasonable and nondiscriminatory. Order ¶ 72. BellSouth argues that it had presented evidence that its collocation intervals are "comparable to the intervals established throughout the industry," citing paragraph 10 of the Tipton reply affidavit. BellSouth Pet. at 9. However, no such evidence appears in the cited paragraph. See Tipton Reply Aff. ¶ 10. The bald assertion that "BellSouth's provisioning intervals are comparable to those available elsewhere in the industry" does appear in paragraph 9 of the Tipton reply affidavit, but it is not accompanied by any supporting data whatsoever. See id. ¶ 9. Thus, even apart from the issue whether other incumbent LECs' provisioning intervals are an inappropriate standard for evaluating BellSouth's intervals, Order ¶ 72, BellSouth provided no evidence to show that its intervals satisfy the Act.

IV. THE COMMISSION'S DETERMINATIONS WITH RESPECT TO UNBUNDLED LOCAL SWITCHING ARE CORRECT AND SHOULD NOT BE DISTURBED

BellSouth's petition merely repeats its previous argument that it is not required to provide CLECs with vertical features that are loaded in its switch but that have not been activated. BellSouth argues, again, that such a requirement would revive the Commission's "superior quality" rules in violation of the Eighth Circuit's ruling. BellSouth Pet. at 10. The Commission properly rejected precisely that argument in its Order, finding that activation of a vertical feature

that is already loaded in the switch amounts merely to a modification necessary to accommodate access to unbundled local switching, not the creation of a superior quality network. Order ¶ 218. Notably, the Commission's rules requiring such modifications were upheld by the Eighth Circuit. See Iowa Utils. Bd. v. FCC, 120 F.3d 753, 812-13 n.33 (8th Cir. 1997), cert. granted, AT&T Corp. v. Iowa Utils. Bd., 118 S. Ct. 879 (1998). BellSouth has presented no reason for the Commission to reverse itself on this point.

Likewise, BellSouth's argument with respect to usage data needed for billing reciprocal compensation simply rehashes, in greater detail, its previous position.[9/] BellSouth argues again that it need not provide actual terminating usage data because its system of offsetting payments "eliminates the need for exchanging actual (or assumed) usage data." BellSouth Pet. at 12. The Commission already rejected exactly that argument, properly finding that "BellSouth's position ignores its obligations under our rules requiring it to provide billing information to purchasers of unbundled local switching." Order ¶ 234. BellSouth has offered no new argument here, merely an insistence that exchange of data is unnecessary because "BellSouth ensures that the terminating CLEC receives the appropriate payment." BellSouth Pet. at 12. The Commission reasonably concluded that an assurance from BellSouth is no substitute for data that would permit the CLEC to determine for itself what payments are due.

9/ The factual contentions set forth at pages 11 and 12 of BellSouth's petition are significantly more detailed than those that appeared in BellSouth's Varner affidavit. See Varner Aff. ¶ 192. Facts that BellSouth did not present to the Commission initially cannot now compel reconsideration of the Commission's determination, as it is well established that section 271 applications must be complete when filed. See SC Order ¶ 38; Mich. Order ¶ 50. Indeed, BellSouth has already been chided for repeatedly violating this requirement. See, e.g., SC Order ¶ ¶ 44, 128, 135, 171 n.499, 209.

V. BELLSOUTH FAILED TO SHOW THAT ITS REQUIRED METHOD OF REBRANDING IS NONDISCRIMINATORY

There is no need for the Commission to reconsider its finding that BellSouth has not met the rebranding requirements of the Act. BellSouth argues that it is capable of rebranding CLECs' customers' operator services and directory assistance calls only if the CLECs obtain dedicated trunking from each end office to BellSouth's operator services and directory assistance platform. BellSouth Pet. at 13. BellSouth reiterates its contention that no other arrangement allows it to identify the CLEC whose brand should be applied to individual calls. Id. The Commission was fully aware of these arguments, see Order ¶ 247, but they were ultimately irrelevant to the Commission's ruling. The Commission based its finding of non-compliance not on BellSouth's refusal to provide the ANI-based solution proposed by MCI, but on BellSouth's failure to show that its dedicated trunking method of rebranding was nondiscriminatory. Id. BellSouth has not shown here that, contrary to the Commission's conclusion, it provided evidence of nondiscrimination in its Application.

Instead, BellSouth attempts now to argue, for the first time, that its dedicated trunking requirement is nondiscriminatory. BellSouth Pet. at 13. In so doing, BellSouth once again violates the rule that applications must be complete when filed and cannot be supplemented with new evidence in the reply round -- let alone on reconsideration after a decision has been reached. In any event, BellSouth's own use of dedicated trunks to deliver traffic to its operator services and directory assistance platforms does not render its requirement that CLECs use dedicated trunks reasonable or nondiscriminatory. BellSouth built dedicated trunks to carry operator services and directory assistance traffic because the traffic volumes of a monopolist made that

architecture efficient. However, the same architecture is not efficient for emerging CLECs, whose customer volumes are not sufficient to justify the expense of dedicated trunking from every end office to BellSouth's operator services and directory assistance platforms. BellSouth's imposition of that requirement creates gross and unreasonable inefficiencies for the CLEC -- inefficiencies that BellSouth does not experience.

VI. BELLSOUTH'S CHALLENGES TO THE COMMISSION'S RULINGS CONCERNING SECTION 272 ARE WITHOUT MERIT

BellSouth's arguments in support of its claim that the Commission erred in analyzing BellSouth's compliance with section 272 requirements are confused. BellSouth argues for reconsideration on two grounds. First, BellSouth claims that the FCC erroneously required BellSouth to comply with section 272's nondiscrimination safeguards before BellSouth receives authority to provide long distance services. See BellSouth Pet. at 15. In the Order, however, the FCC did not impose any such requirement. The Order makes clear that where the FCC found that BellSouth was not in compliance with section 272, it was because BellSouth failed to demonstrate that it will comply with section 272, not because BellSouth has not yet complied with section 272. See Order ¶ 321 ("[W]e will examine BellSouth's asserted compliance with section 272 and evidence of violations of section 272 as indicators of BellSouth's future behavior."). Of course, it would have been absurd for the Commission to have assumed that, where BellSouth claims that it is presently complying with section 272 but is in fact violating it, BellSouth would voluntarily come into compliance after receiving the "carrot" of section 271 authority.[10/]

10/ BellSouth unambiguously claimed to have already been in compliance with section 272. See BellSouth Br. at 65-66 ("BellSouth is submitting with this application extensive evidence demonstrating that BellSouth . . . is currently operating in accordance with section 272's terms." (emphasis added)). It was perfectly appropriate for the FCC to test the truth of this assertion.

Second, contrary to BellSouth's complaints, paragraph 337 of the Order did not require any new or inconsistent levels or types of reporting. See BellSouth Pet. at 15-17. Paragraph 337 simply fleshed out the general requirements of section 272, the Accounting Safeguards Order, and the Ameritech Michigan Order, explaining the kinds of information the BOC must report. The Commission's guidance was exactly the sort of information that BellSouth and other Bell Operating Companies have been demanding from the Commission in order to know the precise contours of compliance with section 271.

Indeed, without such guidance, BellSouth's minimalist approach to reporting would make the information reported meaningless to the public and competitors. For example, BellSouth objects to providing information concerning the type of personnel assigned to a project, their level of expertise, and whether special equipment was used in a project; BellSouth also argues that it is required only to price transactions between BellSouth and BellSouth Long Distance on the basis of the "fair market value" of the transactions, not on the basis of the labor rates used to price the transactions. See BellSouth Pet. at 16-17.[11/] Yet the underlying details of the resources used in a project are necessary to determine whether BellSouth's "fair market values" are in fact fair and whether competitors could gainfully make use of similar resources from BellSouth.

In addition, the FCC did not demand that BellSouth do anything "inconsistent" in reporting the information required for section 272 purposes and the information required by

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11/ We note that, contrary to BellSouth's intimation that it may always price transactions between BellSouth and BellSouth Long Distance at fair market value, the Commission's regulations require non-tariffed services provided by BellSouth to BellSouth Long Distance to be priced "at the higher of fair market value and fully distributed cost," if the services do not qualify for prevailing price valuation. 47 C.F.R. § 32.27(c) (emphasis added). BellSouth's apparent misreading of the Commission's affiliate accounting requirements is further reason to require detailed reporting of affiliate transactions.

ARMIS, CAM, etc. See BellSouth Pet. at 17. That some regulations require a BOC to report one set of information does not mean that other provisions may not require a different set of information. If BellSouth's systems need to be changed to generate that information, then BellSouth should change them. See id. at 16. In any event, MCI believes that more rather than less complete disclosure requirements for transactions between BOCs and their long distance affiliates will better serve to promote the establishment of local competition, by exposing to the light of day any self-dealing BOC/affiliate arrangements.[12/]

VII. THE COMMISSION HAS PRICING AUTHORITY OVER INTERIM NUMBER PORTABILITY

Notwithstanding BellSouth's assertions to the contrary, the FCC has pricing authority over interim number portability. The Eighth Circuit's decision in Iowa Utilities Board does not extend to interim number portability. With respect to pricing, the Eighth Circuit held only that state commissions have exclusive authority to set rates under sections 251(c) and 252(d) of the Act. Iowa Utils. Bd., 120 F.3d at 798-99; see also Iowa Utils. Bd. v. FCC, 135 F.3d 535, 539 (8th Cir. 1998). But the Eighth Circuit explicitly cited the statutory provisions governing number portability and numbering administration, sections 251(b)(2) and 251(e) of the Act, as areas in which "Congress expressly called for the FCC's involvement." Iowa Utils. Bd., 120 F.3d at 794 & n.10; see also Iowa Utils. Bd. v. FCC, 109 F.3d 418, 424-25 (8th Cir. 1996) (granting a stay of the FCC's pricing rules governing rates for ILEC provision of local services and facilities, but

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12/ BellSouth also mis-cites several Commission orders. See, e.g., BellSouth Pet. at 17 n.13 (erroneously citing FCC orders concerning cost allocation manuals, service quality reports, and customer satisfaction reports to support the argument that BellSouth Long Distance may pay BellSouth for work on the basis of fair market value); see also id. at 15 (erroneously citing paragraph 345 of the Order as an instance in which the FCC found BellSouth to be in violation of section 272).

acknowledging that the FCC has authority over the "intrastate" matters covered in section 251(e).).

Section 251(e)(2) grants the FCC the express authority to implement the standard for recovery of number portability costs. The standard set forth requires that the costs of "number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission." 47 U.S.C. § 251(e)(2) (emphasis added). Therefore, section 251(e)(2) grants the FCC specific authority to prescribe pricing principles that ensure that the costs of number portability are allocated on a "competitively neutral" basis.

The Commission has determined that this statutory mandate applies to both interim and long-term number portability.[13/] The Commission's rules establish competitively neutral guidelines with which an ILEC's cost recovery mechanism for the provision of interim number portability must comply.[14/] 47 C.F.R. § 52.29 (1998). As the Commission has explained, while state commissions retain flexibility during this interim period to use a variety of cost-recovery approaches, the statute requires that the approach selected must be consistent with the standard set forth in section 251(e)(2). First Report and Order ¶¶ 125, 127.

13/ See First Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Telephone Number Portability, CC Docket No. 95-116, 11 FCC Rcd. 8352 (July 2, 1996) ("First Report and Order") at ¶ 121; Third Report and Order, In the Matter of Telephone Number Portability, CC Docket No. 95-116, 13 FCC Rcd. 11701 (May 12, 1998) ("Third Report and Order") at ¶ 28.

14/ Any cost recovery mechanism for transitional measures for number portability adopted by a state commission must not "(a) Give one telecommunications carrier an appreciable, incremental cost advantage over another telecommunications carrier, when competing for a specific subscriber (*i.e.*, the recovery mechanism may not have a disparate effect on the incremental costs of competing carriers seeking to serve the same customer); and (b) Have a disparate effect on the ability of competing telecommunications carriers to earn a normal return on their investment." 47 C.F.R. § 52.29 (1998); First Report and Order at ¶¶ 132, 135.

Tellingly, no court has ever held that the FCC exceeded its jurisdiction in promulgating 47 C.F.R. § 52.29. Thus, the Commission has full authority under the Act to require that BellSouth's cost recovery mechanism for interim number portability, as approved by the Louisiana PSC, complies with the FCC's competitively neutral pricing guidelines. Moreover, since item (xi) of the competitive checklist requires that BellSouth comply with the number portability regulations the Commission has promulgated pursuant to section 251, see 47 U.S.C. § 271(c)(2)(B)(xi), BellSouth must comply with the Commission's rules on the pricing of interim number portability for purposes of section 271 as well.

VIII. BELLSOUTH REPEATS THE SAME FRIVOLOUS PUBLIC INTEREST ARGUMENTS THE COMMISSION HAS CONSISTENTLY REJECTED

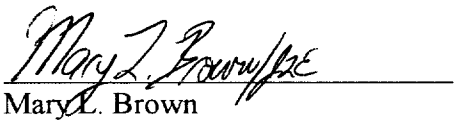
In arguing that the discussion of the public interest standard in the Order should be vacated, BellSouth continues to press its hackneyed and tired argument that the public interest test is nullified by the competitive checklist. See BellSouth Pet. at 18-19. In particular, BellSouth complains that the Commission extended the checklist by indicating that it would examine whether a BOC seeking section 271 authority has established performance monitoring, reporting, and enforcement mechanisms. See id.; Order ¶¶ 363-64. Yet BellSouth fails to acknowledge that the public interest test is indisputably an independent prerequisite to section 271 entry, and that a critical component of the public interest test is whether there are assurances that a local market that is open to competition at the time of section 271 entry will remain open following 271 entry. The Commission's weighing of what assurances are needed to prevent backsliding is necessary to give meaning and context to the public interest inquiry.

In short, there is no serious debate that following section 271 entry a BOC will have little or no incentive to assist CLECs in taking away BOC market share. No party has come forward with any reliable way to curb the BOCs' natural incentive to provide poor service to competitors following section 271 entry, other than robust performance standards for each function new entrants depend on the BOCs to require, backed by self-executing remedies sufficiently severe to give BOCs the incentive to meet the standards. Thus, it is fully appropriate as part of the public interest inquiry -- and indeed required -- that the Commission ensure that prior to section 271 entry effective mechanisms be in place to prevent post-entry backsliding.

CONCLUSION

For the foregoing reasons, BellSouth's Petition for Reconsideration and Clarification should be denied.

Respectfully submitted,



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